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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In the Matter of EXPANDING INTERNATIONAL AIR SERVICE OPPORTUNITIES TO MORE U.S. CITIES	Docket 46534

COMMENTS OF AMERICAN AIRLINES, INC.

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In the Matter of EXPANDING INTERNATIONAL AIR SERVICE OPPORTUNITIES TO MORE U.S. CITIES	Docket 46534

COMMENTS OF AMERICAN AIRLINES, INC.

In response to the Department's request, American Airlines, Inc. submits its comments on the Department's Proposal For Expanding International Air Service Opportunities to More U.S. Cities.

INTRODUCTION

American supports the Department's proposal to expand international air service opportunities. Simply put, the proposal to allow foreign air carriers, under certain conditions, to provide international service, in the absence of bilateral agreement route authority, provides an excellent opportunity to

foster increased competition in the international arena. Such competition in the past too often has been hamstrung by the short-sighted policies of foreign governments that wish to protect their national carriers and believe that suppressing competition advances the interests of those airlines.

As demonstrated in the U.S. domestic market, increased international competition will benefit consumers, who are accorded more travel options at competitive fares. Similarly, the communities for whom this policy is designed stand to enjoy the economic benefits that will flow from increased travel to their areas. Moreover, if the program is properly constructed and executed, all U.S. airlines stand to benefit from the lessening of constraints, as has been demonstrated not only by our experience in the era of deregulation in the U.S., but by the experience of those carriers in markets--such as U.S./Germany--where a liberal regime prevails. These factors form the basis for American's endorsement of the Department's proposed policy.

I. ROBUST COMPETITION IN THE AIR TRAVEL INDUSTRY BENEFITS CONSUMERS, THE AIRLINES, AND SOCIETY IN GENERAL.

When Congress enacted the Airline Deregulation Act of 1978, it recognized that increased competition renders a myriad of benefits to all concerned. Since the Deregulation Act became law for the U.S. domestic market, fares for domestic air travel have, on the average, declined substantially when adjusted for

inflation, and capacity has increased. A recent study by the Brookings Institution concluded that air travelers saved $100 billion in the first decade of deregulation. The number of destinations accessible by scheduled air transportation continues to grow, and travelers enjoy more options for their travel arrangements. Fifteen years ago, few Americans had ever flown on an airplane. Today, air travel is a routine occurrence for many individuals.

Moreover, the increased availability of air transportation has beneficially impacted national, state, and local economies, increasing the revenues from tourism, conventions, and other business travel. Increased air travel further stimulates the economy in other ways by spawning new businesses to service both the airlines and the travelling public.

The airlines, similarly, have benefitted as a result of increased domestic competition. Increased travel, of course, results in greater revenues. Moreover, in order to compete effectively, the airlines have been forced to develop more cost-effective methods without compromising safety. To gain a competitive edge, airlines emphasize on-time performance as well as the modernization of their fleets. Innovative pricing structures are a direct result of deregulation. Again, all of these changes in turn benefit consumers and their communities.

Our experience since 1978 demonstrates the value of allowing market forces, rather than government intervention, to regulate aviation.

II. THE DEPARTMENT MUST CONSTRUCT THE PROPOSED POLICY IN A MANNER THAT ENCOURAGES COMPETITION.

The United States' policy, as stated in the Airline Deregulation Act of 1978, is to achieve in international aviation "maximum reliance on competitive market forces and on actual and potential competition . . ." Section 102(a)(4). Despite the indisputable advantages of competition, this country has in the past been unable to convince several of our key trading partners of the advantages of open access and competition in the international arena. The Department's proposal can serve as a tool for removing the shackles that presently exist in several significant markets.

The United Kingdom provides just one example of the U.S. acceding to a restrictive bilateral agreement that restrains competition at the expense of consumers, business, and civic interests on both sides of the Atlantic. The bilateral agreement signed by the U.S. and the U.K. in 1977 ("Bermuda 2") is the antithesis of open access. Under Bermuda 2, British airlines are afforded twice as many U.K. gateways into the U.S. as U.S. carriers have. Consequently, British carriers fly or are

entitled to fly 88 transatlantic route segments, compared to just 44 for all U.S. carriers.

Bermuda 2 further limits the number of frequencies that can be offered in any given market. The single disapproval mechanism contained in Bermuda 2, by which either the U.S. or the U.K. can block carriers from offering new fares, additionally hinders pricing competition. Using that mechanism, the U.K. government on several occasions has rejected new fares on the grounds that they were too low. Far from fostering competition, Bermuda 2 in fact squelches it.

Other countries are also guilty of thwarting competition and discriminating against U.S. carriers in order to protect their own national carriers. Since the U.S. government has been reluctant to take countermeasures against foreign airlines whose own governments treat U.S. carriers unfairly, the Department must judiciously use the means available to it to persuade unwilling foreign governments to permit competition. The proposed policy can serve as a forceful tool in the Department's arsenal to make international competition a reality.

It is the second condition listed in the Department's proposal that can provide an effective vehicle to promote competition in international aviation by according the benefits

of the new policy only to carriers whose sponsor governments genuinely support aviation competition. The Department must pay particular attention to insure that there are clearly defined criteria for determining whether a procompetitive agreement exists between the U.S. and the country of which the requesting foreign carrier is a national.

The key to the Department's determination must be whether the agreement between the U.S. and the foreign carrier's homeland is fair to U.S. carriers in all material respects. The Department must determine that the terms of the agreement, as well as actual practice, do not serve to stifle competition.

A principal factor on which the Department must focus is whether the agreement between the U.S. and the foreign airline's homeland contains price control mechanisms. To the extent that any such mechanisms are necessary, a double disapproval mechanism is preferable as it restricts competition to a lesser degree than other price control mechanisms.

The Department must also review the process by which U.S. carriers obtain slots in the foreign country, particularly slots at slot-restricted airports. Competition is not fostered by favoring the national carrier to the detriment of U.S. carriers. If U.S. carriers do not receive in the foreign country the same

preferential treatment foreign carriers receive at slot-restricted airports in the U.S., the Department must seriously question whether the foreign government truly wishes to promote competition.

Furthermore, U.S. carriers must be accorded a full array of route rights in the foreign country. The ability of the U.S. carrier's management to increase capacity is another factor that the Department must review.

The Department must also review the U.S. airlines' ability to perform their own ground handling. The Department must judge whether the foreign government unnecessarily restricts self-handling by U.S. carriers. In addition, the relevant bilateral agreement must be reviewed for constraints on other ancillary services necessary for providing international carriage, paying particular attention to currency remittance requirements and the foreign government's policies on customs and import duties.

A foreign government's policies vis-a-vis the CRS of the requesting foreign air carrier must also be reviewed. The Department is fully aware of the unfair practices of foreign air carriers and their governments that hamper fair CRS competition. The Department must conclude that a procompetitive agreement does

not exist if these unfair practices by the foreign air carrier and its government persist.

An acceptable security regime is another factor on which the Department must focus. The Department must also insure that the multiple designation rights of the U.S. are protected.

The guiding principle in reviewing all these factors must be whether the foreign government genuinely encourages competition or whether it only pays lip service to the concept while continuing to protect its own carriers. To fail to demand agreements that truly promote competition is to allow foreign carriers to obtain increased access to the U.S., including the economic benefits inherent in that access, while continuing to enjoy the anti-competitive protection of their home governments. The disadvantage that U.S. air carriers will suffer, in such instance, is tremendous.

III. THE POLICY DOES NOT INCLUDE FIFTH FREEDOM RIGHTS OR SIXTH FREEDOM RIGHTS.

As strongly as American supports the Department's proposal, American emphasizes that the policy must not include permitting an air carrier of one foreign country to transport passengers between the United States and third countries. The proposal, as stated, is limited to carrying passengers between the U.S. and the homeland of the foreign airline. Thus American's comments do

not pertain to what is known as "fifth freedom rights". Moreover, the proposal must provide a mechanism for precluding the carriage of fifth freedom traffic between the U.S. and points in third countries via the homeland, commonly known as "sixth freedom" traffic. Such rights should instead be the products of reciprocal exchange embodied in the bilateral agreement.

To assure that the proposal is not used as a means for foreign air carriers to gain an unfair advantage in providing service between the U.S. and third countries, the terms of the grant of authority to the foreign air carrier must include an agreement by such carrier that it will not advertise, distribute through any CRS, or otherwise market online connecting services involving third countries and the approved U.S. city. In addition, the grant of authority must be conditioned on the foreign air carrier's agreement that it will not permit its traffic documents to be issued to provide transportation involving third countries and the approved U.S. point.

The foreign air carrier must further agree to report on a monthly basis the final destination shown on lifted coupons for all revenue passenger traffic between the approved U.S. city and the foreign carrier's homeland. Inasmuch as the foreign air carrier stands to profit from the Department's proposal, it

should not consider these requirements burdensome or unreasonable.

SUMMARY

The proposed policy can create valuable bargaining leverage in the battle to promote international competition among international carriers. Of course, this opportunity to enhance competition will be exploited only if the Department clearly articulates the criteria for "procompetitive agreements" and then vigorously enforces them. There must be no giveaways to foreign air carriers whose home governments stifle competition, whether by insisting on restrictive bilateral agreements or by engaging in or condoning unfair and discriminatory practices. American urges the Department to seize this opportunity to promote more open access to the United States and advance international competition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing comments by first-class mail on all persons named on the attached list.

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November 9, 1989

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